

January 30, 2007

The Honorable Valerie Woodruff  
Secretary of Education  
401 Federal Street  
Dover, DE 19901

RE: 10 DE Reg. 1114 [Certification of Early Childhood Special Ed Teacher Regulation]

Dear Secretary Woodruff:

The State Council for Persons with Disabilities (SCPD) has reviewed the Professional Standards Board's [in collaboration with the Department of Education (DOE)], proposal to repeal a regulation establishing a certification for an early childhood teacher. The regulation was published as 10 DE Reg. 1114 in the January 1, 2007 issue of the Register of Regulations. Council has the following observations.

First, the DOE requires comments to be submitted by January 27, 2006. This is less than 30 days from publication and does not conform to Title 29 Del.C. §10118(a).

Second, the rationale for the repeal is that it has been replaced by 14 DE Admin Code §1570. Please see enclosed copy of the latter regulation which covers certification for teachers of students from birth to grade 2. The repealed regulation covered teachers of students ages 3 to 6 years. The new regulation therefore encompasses a greater age range than the repealed regulation. The new regulation effectively makes the repealed regulation superfluous and ostensibly justifies repeal. However, this change may create some "tension" between DHSS and DOE jurisdiction to issue regulations:

A. On the one hand, DHSS is authorized to issue regulations implementing the IDEA-C program (covering students from birth through 36 months after review and comment by the Interagency Coordinating Council. See Title 16 Del.C. §218. Indeed, Title 16 Del.C. §212e contemplates DHSS development of regulations covering "qualified personnel".

B. On the other hand, DOE is authorized to issue regulations implementing IDEA-B which covers the same age range (birth-2) for children with hearing impairment, visual impairment, deaf-blindness, or autism. See Title 14 Del.C. §§1703(k)(l)(m) and AMSES §4.1.1. Moreover, Title 14 Del.C. §3110(a) authorizes the DOE to issue regulations covering both Title 14 and "other titles" (e.g. Title 16). However, its certification regulations only cover teachers within public and charter schools. See Title 14 Del.C. §1202(6).

The interplay of these overlapping statutes raises some interesting issues. For example, does 14 DE Admin Code §1570 define the qualifications of a teacher providing services under Title 16 Ch. 2 if performed in a district or charter school sponsored setting? The DOE may wish to clarify the scope of application of its regulations in the context of Part C students.

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our observations on the proposed regulations.

Sincerely,

Daniese McMullin-Powell, Chairperson  
State Council for Persons with Disabilities

cc: Ms. Jean Allen  
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